

JULIAN HAMMOND (SBN 268489)
jhammond@hammondlawpc.com
ADRIAN BARNES (SBN 253131)
abarnes@hammondlawpc.com
POLINA BRANDLER (SBN 269086)
pbrandler@hammondlawpc.com
ARI CHERNIAK (SBN 290071)
acherniak@hammondlawpc.com
HAMMONDLAW, P.C.
1201 Pacific Ave, 6th Floor
Tacoma, WA 98402
Tel. (310) 601-6766
Fax (310) 295-2385

JASON SETH HARROW (SBN 308560)
jason@gerstein-harrow.com
GERSTEIN HARROW, LLP
3243b S. La Cienega Blvd.
Los Angeles, CA 90016
(323) 744-5293

EMILY GERRICK (*pro hoc vice pending*)
emily@gerstein-harrow.com
GERSTEIN HARROW, LLP
810 7th St. NE, Ste. 301
Washington, DC 20002
(202) 540-8105

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

NORTHER DISTRICT OF CALIFORNIA

NICHOLAS C. SMITH-WASHINGTON, on
behalf of himself and all others similarly situated,

Plaintiff,

vs.

TAXACT, INC.,

Defendant.

Case No.: 3:23-CV-00830-VC

Assigned to Hon. Vince Chhabria

**DECLARATION OF POLINA BRANDLER
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S MOTION
TO STAY UNDER 9 U.S.C. § 3**

Date: May 18, 2023

Time: 10:00 A.M.

Court: Courtroom 4, 17th Floor

Date Action Filed: January 24, 2023

Removal Filed: February 23, 2023

1 I, Polina Brandler, declare as follows:

2 1. I am a member in good standing of the Bar of the State of California and associate at the
3 law firm HammondLaw, P.C., counsel of record for Plaintiff Nicholas C. Smith-Washington and the
4 putative Class in this matter. I submit this declaration in support of Plaintiff's Opposition to Defendant
5 TaxAct Inc.'s Motion to Stay Under 9 U.S.C. § 3. I have personal knowledge of the facts set forth
6 herein and, if called upon to testify, I could and would competently testify to the following.

7 2. Attached hereto as **Exhibit 1** is a true and correct copy of the JAMS Streamlined
8 Arbitration Rules and Procedures (Effective June 1, 2021). I obtained this document as follows: I
9 visited jamsadr.com, and signed into my account. I then located and clicked on a link called "Rules &
10 Clauses." On the webpage that I was navigated to, I clicked on the "Streamlined Arbitration Rules &
11 Procedures" hyperlink. I then selected "Download a PDF version here" and downloaded it.

12 3. I initially tried to obtain a copy of the JAMS Streamlined Arbitration Rules and
13 Procedures from the link provided in TaxAct's Terms of Service and License Agreement (located in the
14 paragraph immediately below the Dispute Resolution; Binding Arbitration heading), but that link only
15 brought me to the JAMS homepage. I then had to take the steps described above to access a copy of
16 the Rules.

17 4. Attached hereto as **Exhibit 2** is a true and correct copy of JAMS Demand for
18 Arbitration Form. I obtained this document by doing the following: I visited jamsadr.com, and after
19 signing into my attorney account, I clicked on "Submit a Case" link at the top of the page. On the next
20 webpage I clicked on "Submit An Arbitration" button and was brought to a screen that read "Demand
21 For Arbitration Form" at the top. I then clicked on the webpage and saved it as a PDF.

22 5. In JAMS arbitrations, "[f]or two party matters, the Filing Fee is \$2,000." *See* Exhibit 2.
23 The court filing fee in this court is \$402. *See* <https://cand.uscourts.gov/about/clerks-office/court-fees/>

24 6. Attached hereto as **Exhibit 3** is a true and correct copy of the JAMS Fee Schedule for
25 the Honorable Robert Freeman (Ret.) obtained from Judge Freeman's assistant at JAMS in another case
26 handled by HammondLaw, P.C. His daily arbitration rate is \$8,500 and he charges \$850 per hour for
27 "other professional time, including additional hearing time, pre and post hearing reading and research,
28

1 and conference calls.” It is my understanding that Judge Freeman conducts arbitrations out of JAMS in
2 the Sacramento and Walnut Creek offices and that he charges mid-level rates in comparison to other
3 JAMS neutrals.

4 7. Attached hereto as **Exhibit 4** is a true and correct copy of the JAMS Fee Schedule for
5 the Honorable David E. Hunter (Ret.) I obtained from Judge Hunter’s assistant at JAMS in another case
6 handled by HammondLaw, P.C. His daily arbitration rate is \$9,000 and he charges \$900 per hour for
7 “other professional time, including additional hearing time, pre and post hearing reading and research,
8 and conference calls.” It is my understanding that Judge Hunter conducts arbitrations out of JAMS in
9 the Sacramento and Walnut Creek offices and that he charges mid-level rates in comparison to other
10 JAMS neutrals.

11 8. I estimate that the arbitrator would spend approximately 10 hours on pretrial proceedings
12 in an individual arbitration of Plaintiff’s claims, and trial would last two to three days. Thus, I estimate
13 that the total fee charged by the arbitrator would be at least \$25,500 and as much as \$34,000 (based on
14 Judge Freeman’s rates).

15 9. JAMS also assesses a 13% administration fee on all Professional Fees, which would
16 amount to at least an additional \$3,315 (13% of \$25,500). *See Exhibit 2.*


17 10. Thus, I estimate that arbitration fees in Plaintiff’s case, including the filing fee (without
18 attorneys’ fees that the arbitrator has the discretion to allocate to Plaintiff under the Streamlined Rules
19 & Procedures, or travel costs set out in the paragraph below), could be at least \$30,815.

20 11. The TaxAct, Inc.’s “Dispute Resolution; Binding Arbitration” provision requires
21 Plaintiff (and other California users) to arbitrate their claims in Dallas, Texas, as well as to pursue and
22 defendant any other relief (in small claims court, any appeals, and any enforcement of the arbitration
23 award actions) in Dallas, Texas.

24 12. Plaintiff resides in Citrus Heights, California. Based on my search for airfare on
25 expedia.com, airfare from Sacramento International Airport (SMF), which is the airport near the Citrus
26 Heights area, to Dallas Fort Worth International Airport (DFW), is approximately \$250 to \$350,
27 depending on travel days and times of day. Based on my search for hotels on expedia.com, a mid-range
28

1 hotel in the Dallas downtown area is approximately \$300 per night (without taxes and fees). Based on
2 my search in the Uber app, cab fare between Citrus Heights to SIA is approximately \$40 one way, and
3 cab fare between DFW to Dallas downtown is approximately \$42 one way. I estimate that the cost of
4 travel and lodging alone, not accounting for Plaintiff's lost wages resulting from having to take time off
5 work, would be approximately \$1,350 for one 3-day trip to Dallas.

6
7 I declare under penalty of perjury under the laws of the State of California and the United States
8 that the foregoing is true and correct. Executed on April 20, 2023.

9
10 
11 Polina Brandler
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28